Office - Supreme Court, U. S.
FILED
OCT 29 1941
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1941.

Nos. 687 and 688.

UNITED NEW YORK SANDY HOOK PILOTS ASSOCIATION and UNITED NEW JERSEY SANDY HOOK PILOTS ASSOCIATION, as owners of the Pilot Boat *Sandy Hook*, in their own behalf, etc.,

Libelants-Petitioners,

against

The Norwegian passenger Motor Ship *Oslofjord*, etc.,

and

DEN NORSKE AMERIKALINJE A/S (The Norwegian America Line), a Norwegian corporation, and owner of the motorship *Oslofjord,*

and

OIVIND LORENTZEN, as Director and Curator of Shipping of the Royal Norwegian Government, on behalf of The Royal Norwegian Government and of DEN NORSKE AMERIKALINJE A/S,

Respondents.

And Cross Suit.

REPLY BRIEF FOR THE PETITIONERS TO THE BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

W. H. MCGRANN,
Counsel for Petitioners.

W. H. MCGRANN,
EUGENE F. GILLIGAN,
Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

Supreme Court of the United States

UNITED NEW YORK SANDY HOOK PILOTS ASSOCIATION and UNITED NEW JERSEY SANDY HOOK PILOTS ASSOCIATION, as owners of the Pilot Boat *Sandy Hook*, in their own behalf, etc.,
Libelants-Petitioners,

against

THE NORWEGIAN PASSENGER MOTOR SHIP *Oslofjord*, etc.,

and

DEN NORSKE AMERIKALINJE A/S (The Norwegian America Line), a Norwegian corporation, and owner of the motorship *Oslofjord*,

and

OIVIND LORENTZEN, as Director and Curator of Shipping of the Royal Norwegian Government, on behalf of The Royal Norwegian Government and of Den Norske Amerikalinje A/S,
Respondents.

And Cross Suit.

October Term, 1941.
Nos. 687 & 688.

REPLY BRIEF FOR THE PETITIONERS TO THE BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

ARGUMENT.

The object of this reply brief is primarily intended to direct the Court's attention to what is believed to be a mis-

interpretation of the English case cited by Respondents in their Brief in Opposition, namely, *Nippon Yusen Kaisha* vs. *China Nav. Co.*, 1935 Appeal Cases 177, page 7 of Respondents' Brief.

In that case, the Privy Council decided that the *Kiangsu* committed a breach of Article 16 of the International Rules, and was condemned therefor, page 183.

The circumstances there were that the *Kiangsu* heard the fog signal of the *Toyooka Maru* on the former's port bow and assumed that the latter was an outward bound vessel and would adhere to that side of the channel (south) opposite to the side which the *Kiangsu* was pursuing (north). However, the *Toyooka Maru* was crossing the channel.

As to the inference that the *Toyooka Maru* was on and would continue on the south side of the channel, the Court concluded that that was not an "ascertainment" of the position of that vessel sufficient to remove the *Kiangsu* from the operation of the Rule and its requirement that she should "stop her engines". The Court stated at page 182:

> "An inference based on these data was not in their Lordships' opinion an ascertainment on which it was justifiable to disregard the precaution enjoined by Regulation 16. In order that the position of a vessel may be ascertained by another vessel within the meaning of the Regulation she must be known by that other vessel to be in such a position that both vessels can safely proceed without risk of collision: see, *e. g.*, per Sir Gorell Barnes P. in *The Aras*, 1907 Prob. 28, 34. *The Kiangsu did not know the position of the Toyooka Maru in this sense; she inferred it and took the chance of her inference being right.*" (Italics ours.)

Respondents rely on the above quoted language to establish a general rule [page 7 of Respondents' Brief in Opposition]; but, it is to be emphasized that the position of the vessel whose fog signal is heard, to repeat the extract from the foregoing quotation, must be known to be such "that both vessels can safely proceed without risk of collision."

It was conceded that the master of the *Oslofjord* did not "know" the position of the *Sandy Hook*, that is, whether the *Sandy Hook* was to the west or south of Ambrose Lightship. *Petition*, page 8. We contend that the navigators of the *Oslofjord* did not *know* that the *Sandy Hook* was in or would remain in a position near Ambrose Lightship, particularly as the pilotage grounds on which the *Sandy Hook* maneuvered were quite extensive, including waters well to the southward of Ambrose Lightship. It seems that a reasonable assumption or inference must be that the *Sandy Hook* would cruise outward, and to the southward, from Ambrose Lightship, and would thus be "crossing the channel" into which the *Oslofjord* directed her course.

As to the contention in Respondents' Brief that observance of the Rule would require the moving vessel (*Oslofjord*) to stop until the *Sandy Hook* would be sighted, that is not only not the contention of these Petitioners, but it does not by any means follow from observance of the Rule (Article 16), as all the Rule requires is that the moving vessel (*Oslofjord*) should "stop her engines, and then navigate with caution until danger of collision is over." *Petition*, page 5.

It is repeated that the *Oslofjord* not only violated the Rule with respect to stopping her engines on hearing the

Sandy Hook's fog whistle, but she did not thereafter navigate with caution. *Petition,* pages 3-4.

Respectfully submitted,

W. H. McGRANN,
Counsel for Petitioners.

EUGENE F. GILLIGAN,
Of Counsel.

New York, N. Y.,
October 28, 1941.